

VZCZCXRO7524
PP RUEHDBU RUEHLN RUEHSK RUEHVK RUEHYG
DE RUEHKB #0476/01 1631112
ZNR UUUUU ZZH
P 121112Z JUN 09
FM AMEMBASSY BAKU
TO RUEHC/SECSTATE WASHDC PRIORITY 1353
RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RUCNCIS/CIS COLLECTIVE PRIORITY

UNCLAS SECTION 01 OF 03 BAKU 000476

SIPDIS

DEPT FOR INL - JCAMPBELL
DEPT FOR EUR/ACE AND EUR/CARC
DOJ/OPDAT FOR ALEXANDRE/EHRENSTAMM/NEWMCOMBE

E.O. 12958: N/A

TAGS: [EFIN](#) [SNAR](#) [KJUS](#) [OTRA](#) [KCRM](#) [KCOR](#) [AJ](#)

SUBJECT: AZERBAIJAN: PROSECUTOR GENERAL'S OFFICE SHOWS NEW
SIGNS OF COOPERATION

¶1. SUMMARY: A long period of inaccessibility to the Prosecutor General of Azerbaijan by the Embassy appears to have ended after the October 2008 elections. After a fruitful and warm meeting with the Ambassador and the DOJ Resident Legal Advisor, the Prosecutor General asked the RLA to travel throughout the country educating his prosecutors on the finer points of modern criminal law and procedure. He assigned three senior prosecutors to help towards this end. As a result, the RLA has held, and continues to hold, a series of seminars that have resulted in not only raising the Azeris' professional capabilities, but also has them requesting a change in their criminal procedure code, namely the institution of plea bargaining. End Summary.

Background: Prosecutors' Capabilities and Attitudes

¶2. One of the constitutional principles of the Azeri court system is the right to a contest between the parties to convince the judge of the righteousness of their respective cases. The wording of the Constitution suggests that there is to be an adversarial process in which each party presents its own case while distinguishing it from the deficiencies of the opposing party's case. The judge in an adversarial system plays a relatively passive role, mainly responding to the parties' objections and ruling on the parties' motions; this differs from an inquisitorial system in which judges play a more active role during the trial. Despite the language in the Constitution and the Civil and Criminal Codes, which suggest an adversarial system, conflicting language in the procedural codes suggest the contrary. As a result, the inquisitorial manner of proceeding often takes precedence in courtroom practice.

¶3. Partly as a consequence, Azeri prosecutors do not have a grasp of how to put together and prosecute complex criminal cases in the fields of corruption and financial crime. Prosecutors and investigators are stymied by today's interconnected world where criminals are constantly on the move between countries. The prosecutors are unaware of the various methods of law enforcement cooperation available between Azerbaijan and the U.S./Europe. Even once they get to trial, few advocates are skilled at organizing witnesses in a logical flow; giving a focused opening statement; addressing the defense theory in direct examination; effectively handling diagrams and other documentation; using leading questions in cross examination; and analyzing points for closing argument. Further, none understand their heavy ethical obligations in an adversarial trial. Although an Ethics Code for Azeri prosecutors was implemented last year, it remains a vague abstraction for the majority of trial prosecutors.

¶4. Allegedly because of poor health and scheduling conflicts, the Prosecutor General of Azerbaijan had been uncooperative and uncommunicative to repeated requests by the Embassy to help resolve these problems. Despite four diplomatic notes sent over the summer of 2008 requesting a meeting with the Ambassador and the newly arrived U.S. Department of Justice (DOJ) Resident Legal Advisor (RLA), the Prosecutor General ignored these diplomatic notes.

Meeting with the Prosecutor General

¶5. After the October Presidential elections, the Prosecutor General was reaffirmed in his post by the President. Suddenly, his negative attitude mainly disappeared. In November 2008, the Prosecutor General invited the Ambassador and the RLA to his office, jovially welcomed them with open arms, and spent over two hours discussing the RLA's past experience in handling complex federal prosecutions and what the RLA could do now to help the state of the Azeri criminal justice system. He gave the RLA the green light to travel the width and breadth of the country educating his prosecutors on the finer points of modern criminal law and procedure. He assigned three senior prosecutors to be the points of contact (POC) for the RLA: the head of international affairs and training; the head of the anti corruption task force; and the chief prosecutor for the city of Baku. The Prosecutor General stated that he had given those three a mandate to smooth the RLA's way, so there would be no obstacles in the RLA's efforts to advise and train the entire prosecutor's staff.

BAKU 00000476 002 OF 003

¶6. The Prosecutor General has been true to his word. The three POC's regularly meet the RLA for lunch or dinner to discuss their public cases and their resource gaps. Pursuant to their requests, the RLA has held, *inter alia*, the following programs, each with current and ongoing follow-up.

INL OPDAT/RLA Programs for the Prosecutors' Office

¶7. A seminar on understanding money laundering. This seminar, held in conjunction with the Council of Europe, was also attended by judges and by Members of Parliament. It paved the way to the recent passage of an anti-money laundering law. To educate prosecutors and investigators on this newly enacted law and on how to interact with a Financial Intelligence Unit (FIU), a follow-up, more detailed series of trainings will be held in July 2009. These will be conducted by a senior U.S. Treasury IRS CID Agent who is the author of a world recognized text book on money laundering investigation.

¶8. A seminar on corruption investigation and prosecution. Taught by the RLA, he used a case model to explain in detail the six-step method used to investigate and prosecute complicated cases: use of informants; technical surveillance; undercover operations; financial tracing and net worth analysis; plea bargaining, including immunity and witness protection; and the charging of racketeering and money-laundering laws. The RLA explained how the fruits of these six steps can be put together into a trial schematic simple enough for a jury (or Azeri judge) to understand. The Azeri prosecutors appreciated the need, no matter what the resources, to think creatively and proactively and seemed to appreciate how various techniques illustrated by the RLA, especially a net worth analysis, could further an investigation. At request of the head of the anti-corruption task force, a follow-up, more detailed financial investigation workshop for prosecutors and investigators will be held in July 2009, to be conducted by a senior FBI Financial

Analyst/Certified Accountant.

¶9. A seminar on international mutual legal assistance (evidence requests and exchange), extradition, and foreign asset seizure. This seminar was taught by an attorney from DOJ's Office of International Affairs (OIA) and by a British prosecutor seconded to the Basil Institute on Governance. In addition to Azeri prosecutors, in attendance were staff attorneys from the Ministry of Justice's Central Authority, which handles all foreign evidence requests. The two presenters provided techniques, strategies, concepts, and ideas for Azeri law enforcement to use in trans-border matters. The GOAJ now finally understands that it does not need an MLAT in order to cooperate or receive cooperation in international matters. The Central Authority for the Ministry of Justice now knows to coordinate with DOJ OPDAT/OIA and EUROJUST. The RLA will continue to stay in regular contact with the Ministry of Justice Central Authority to ensure viability.

¶10. Trial advocacy training. The RLA took three of the most promising and better English-speaking young Azeri prosecutors to the DOJ National Advocacy Center (NAC) Columbia, South Carolina. They went through the two-week trial advocacy course designed for Assistant U.S. Attorneys. This course at the NAC is designed to teach a prosecutor how to prepare witnesses for a trial, implement trial strategy, effectively question witnesses, argue cogently, think on one's feet, and how to generally conduct one's self in a courtroom. The three Azeris performed superbly, were well prepared for class every day, and passed the course with enthusiasm. They are now qualified not only to successfully handle contested trials, but also to assist the RLA in running a series of trial advocacy programs in Azerbaijan to teach courtroom advocacy to other Azeri prosecutors.

¶11. A seminar on trial ethics. Specifically at the Prosecutor General's request, the RLA and an attorney from DOJ's Office of Professional Responsibility (OPR) traveled to different prosecutors' offices around the country to familiarize regional Azeri prosecutors with the Azeri ethics code, illustrate the similarities with the U.S. code, provide examples of professional misconduct in the trial setting, and to advise on procedures for

BAKU 00000476 003 OF 003

investigating and punishing such allegations of prosecutorial misconduct. They pointed out provisions in the Azeri Code that mandated a prosecutor's ethical duty to act towards the court and defendant fairly and responsibly. They explained how that this is the same mandate imposed by the U.S. Supreme Court in *Brady v. Maryland*, which requires prosecutors to turn over any material that might be helpful to the defense. In each of the venues, the participants expressed enthusiasm, stating that this was an eye-opening experience for them. It has made them think about what it means to be a prosecutor and about the special responsibility that they hold.

¶12. Interestingly, the Ministry of Foreign Affairs sent a representative from its Office of International Law and Treaties to attend several of the regional sessions. He specifically expressed his delight and appreciation for the seminars. He said he wished that the senior level leadership in all branches of the Azeri government could have heard the Baku ethics presentation. He realized that would never happen (they are always too busy), but he believed that the presentations resonated well with the Prosecutor's Office and would have long-term and sustaining impact.

Plea Bargaining

¶13. Each of the above listed seminars touched on the

issue of plea bargaining. Azeri prosecutors who have attended the RLAQs seminars, as well as judges who have attended separate judicial procedure seminars held by the RLA, are now clamoring for the institution of plea bargaining in Azerbaijan. Accordingly, the RLA commissioned a British law professor who is an expert in international criminal procedure to write a study paper on the feasibility of plea bargaining in Azerbaijan. He did indeed find feasibility, and further recommended that the plea bargaining law be brought in conjunction with a speedy trial law. His paper was recently presented to the Azeri Anti Corruption Commission (ACC).

¶14. The ACC representative just informed the RLA that DOJ should hold a public education seminar in September for Members of Parliament. If the British law professor and other DOJ experts can convince the MP's to consider the law, as opposed to rejecting it outright, then the Commission, with RLA support, will begin work on drafting such a law. The RLA recommends that if the MP's do indeed recommend consideration, then a component of Azeri chief prosecutors, judges, and MP's should go on a criminal procedure study tour to the U.S. to observe first hand how the system works. This further would complement the Prosecutor General's request that his trial attorneys become well-versed in the adversarial system.

¶15. Comment: With the departure of the ICITAP program in Azerbaijan, the Embassy has been pleased that the RLA/OPDAT program has been able to increase its scope and depth of engagement. The RLA continues to lead meaningful efforts to develop and implement justice sector institutional, criminal procedure, and anti-corruption reform initiatives, including raising the consciousness of government and society, through formal and informal methods, as to the eventual benefits of a democratic society governed by rule of law and driven by a market economy. Accordingly, the Embassy strongly recommends the continuation of this highly active and useful INL-funded program.

DERSE